IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

IN RE:	)	
	)	
APPLICATION OF JSC MCC	)	
EUROCHEM AND EUROCHEM	)	**Case No. __________________**
TRADING GMBH FOR AN	)	
ORDER TO TAKE DISCOVERY	)	
PURSUANT TO 28 U.S.C. § 1782	)	

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION OF JSC MCC EUROCHEM AND EUROCHEM TRADING GMBH FOR AN ORDER TO TAKE DISCOVERY PURSUANT TO 28 U.S.C. § 1782 FROM SANDEEP CHAUHAN

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JSC MCC EuroChem ("EuroChem") and EuroChem Trading GmbH ("ECTG") (collectively referred to as the "Applicants") respectfully petition this Court for an order pursuant to 28 U.S.C. §1782 authorizing them to take discovery from Sandeep Chauhan ("Mr. Chauhan"), a resident in the Middle District of Tennessee, for use in (i) ongoing proceedings in (a) the British Virgin Islands in the case brought by Applicants entitled *JSC MCC EuroChem v. Livingston Properties Equities Inc. et al.*, case number BVIHCV (COM) 2015/0097 (the "BVI Action"); (b) Cyprus in the action captioned *EuroChem, JSC MCC v. Nimati International*, case number 5996/2015 (the "Cyprus Action"); and (c) London in the on-going arbitration before the London Court of International Arbitration in the matter entitled *EuroChem Trading GmbH v. Dreymoor Fertilisers Overseas Pte Limited*, LCIA Arbitration Number 173598 (the "LCIA Arbitration") (collectively, the "Foreign Proceedings") and (ii) in the contemplated future foreign litigation discussed below (the "Contemplated Proceedings").

I. PRELIMINARY STATEMENT

Applicant EuroChem is Russia's largest mineral fertilizer trader and one of the leading fertilizer production companies in the world with approximately $7 billion[1] in annual sales and worldwide operations. At all relevant times Applicant ECTG was a wholly owned subsidiary of EuroChem which purchased billions of dollars of fertilizer from EuroChem for resale worldwide.[2] (Declaration of Igor Popov dated May 17, 2017 ("Popov Decl."), ¶ 4).

This Application stems from a massive multi-country bribery scheme in which at least $45 million in bribes was paid by Applicants' trading partners to two senior former executives of Applicant. The bribe recipients were (1) Valery Rogalskiy ("Mr. Rogalskiy"), a former member of the Managing Board of Directors of EuroChem and the Curator – Senior Manager – of ECTG responsible for all sales worldwide, and (2) Dmitry Pomytkin ("Mr. Pomytkin"), the former Deputy Head of Marketing and Sales Division and the Head of Fertilisers Sales Department of EuroChem, responsible for fertilizer sales worldwide and reporting to Mr. Rogalskiy. (Popov Decl., ¶ 5).

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[1] Unless otherwise specified, all currency in this Memorandum references the United States dollar.

[2] Following a corporate restructuring, ECTG is now a sister company of EuroChem, sharing a common Swiss parent company, EuroChem AG. (Popov Decl., ¶ 4).

Together, Mr. Rogalskiy and Mr. Pomytkin oversaw billions of US dollars of sales of fertilizer by Applicants and, as shown below, accepted bribery payments from many of the purchasers. Applicants were first alerted to the bribery in 2014 when Yara International S.A., a major international fertilizer company based in Norway partially owned by the Norwegian government ("Yara") informed Applicants that it was pleading guilty to bribery charges in Norway and paying the largest fine ever. (*See* Yara Press Release dated January 15, 2014, Popov Decl., Ex 2). Yara admitted that the bribery scheme operated by its Swiss subsidiary extended to purchases from Applicants and that millions of dollars had been paid by its subsidiary to or for the benefit of Mr. Rogalskiy and Mr. Pomytkin in order to obtain fertilizer products from Applicants. Yara provided extensive documentation evidencing the bribe payments made to Mr. Rogalskiy and Mr. Pomytkin or entities under their control. (Popov Decl., ¶ 6).

A massive investigation into this bribery scheme ensued in which Applicants brought Proceedings in various jurisdictions, including Singapore, Cyprus, the BVI, California and elsewhere, obtaining evidence showing at least $45 million in bribes had been paid to or for the benefit of Mr. Rogalskiy and Mr. Pomytkin by many of Applicants' largest trading partners, all of whom dealt directly with Mr. Rogalskiy and Mr. Pomytkin when purchasing fertilizer from Applicants. The $45 million in bribes so far identified was paid to Mr. Rogalskiy and Mr.

Pomytkin through a web of offshore shell companies owned or controlled by them located primarily in the British Virgin Islands. (Popov Decl., ¶ 7).

Once confronted with the evidence uncovered by Applicants in their own investigation, most of Applicants' trading partners admitted making similar improper payments to Mr. Rogalskiy and Mr. Pomytkin and provided extensive additional evidence showing the payments they made over the ten year period from 2004-2014 when Mr. Rogalskiy's employment was terminated. Dreymoor Fertilisers Overseas (Pte.) Limited, a Singapore company ("Dreymoor"), however, adamantly refused to acknowledge that it, too, paid similar bribes. Dreymoor took this position despite the fact that Applicants had overwhelming documentary evidence thereof. (Popov Decl., ¶ 8).

Dreymoor, a trading partner with and agent for ECTG, was one of the major bribe payors in Mr. Rogalskiy's and Mr. Pomytkin's bribery scheme. From 2008 through 2013, Dreymoor handled more than 4 million tons of Applicants' fertilizer products with a value of more than $1.4 billion. Under certain contracts – those at issue in the ongoing BVI Action – Dreymoor was a trading partner with ECTG, *i.e.*, a principal buyer for its own account under hundreds of contracts with Applicants. Under other contracts – those at issue in the LCIA Arbitration – Dreymoor was the agent for Applicants, receiving commissions on sales of ECTG's products in India while at the same bribing Mr. Rogalskiy and Mr. Pomytkin. (Popov Decl., ¶ 9).

In return, Mr. Rogalskiy guaranteed large volumes of high margin products to Dreymoor and affiliates on much better terms than they would otherwise have been able to obtain. Mr. Rogalskiy also arranged for Dreymoor to receive millions of dollars of grossly excessive commissions on transactions where it acted as agent for Applicants in India. Evidence obtained by Applicants – including bank records and other documents found in Mr. Rogalskiy's office at

EuroChem when his employment was terminated and admissions recently made by Dreymoor's sole shareholder Alexander Shishkin ("Mr. Shishkin") – unequivocally show Dreymoor's involvement in the bribery scheme. (Popov Decl., ¶ 10).

In this Application, Applicants seek discovery from Mr. Chauhan, a resident of Franklin, Tennessee. Mr. Chauhan is a director of Dreymoor, and has been a director since at least May 2010. In addition, Applicants were informed during their years of dealing with Dreymoor that Mr. Chauhan was the CEO of Dreymoor responsible for its operations worldwide, including its subsidiary Dreymoor America LLC, a Delaware company with its principal place of business at 428 Main Street, Franklin, Tennessee ("Dreymoor America"). Mr. Chauhan reported to Dreymoor's sole shareholder, Alexander Shishkin, a Russian citizen who recently admitted to Applicants that he personally negotiated and arranged for the payments made by Dreymoor to Mr. Rogalskiy. (Popov Decl., ¶ 11).

Mr. Chauhan personally negotiated many of the hundreds of contracts between Dreymoor and its affiliates (including Dreymoor America) which are at issue in the Foreign Proceedings. Mr. Chauhan and Mr. Shishkin were the Dreymoor representatives dealing directly with Mr. Rogalskiy and Mr. Pomytkin throughout the time bribes were paid. As a director and CEO of Dreymoor reporting directly to Mr. Shishkin, Mr. Chauhan presumably has knowledge of the millions of dollars of improper payments made to Mr. Rogalskiy and Mr. Pomytkin and the benefits received by Dreymoor and its foreign affiliates on account thereof. (Popov Decl., ¶ 12).

Mr. Chauhan is also a director of Dreymoor America, a subsidiary of Dreymoor which also purchased huge amounts of fertilizer from Applicants. Mr. Chauhan will have information regarding the benefits obtained by Dreymoor America from the bribes which were paid by Dreymoor. (Popov Decl., ¶ 13).

The information held by Mr. Chauhan will be highly relevant to the Foreign Proceedings and the Contemplated Proceedings. In the BVI Action, Applicants seek to recover the damages caused by the improper payments – hundreds of millions of dollars in lost profits on billions of dollars of sales to the companies which paid the bribes to Mr. Rogalskiy and Mr. Pomytkin – plus recovery of the bribe amounts (at least $45 million) and the profits obtained by the bribe payors. Dreymoor, Mr. Rogalskiy, Mr. Pomytkin and companies controlled by them are defendants in the BVI action. World-wide asset freeze orders have been entered by the BVI court against Mr. Rogalskiy, Mr. Pomytkin and all entities controlled by them which received bribe payments. When entering these orders, the BVI court found there was "*no doubt about*" the dishonest bribery scheme, that Mr. Rogalskiy and Mr. Pomytkin were "*the instigators and perpetrators of this very serious fraud*" and the "*puppet masters*" of their BVI Companies, which held the bribe monies "*on constructive trust*" for Applicants, including all bribes paid by Dreymoor. (Popov Decl., ¶ 14; Ex. 3). Mr. Chauhan's evidence will likely be instrumental in quantifying the bribes paid by Dreymoor and the profits received by Dreymoor, Dreymoor America and their affiliates, central issues in the BVI Action. (Popov Decl., ¶ 14).

In the LCIA Arbitration, ECTG seeks to recover damages under the agency agreements between ECTG and Dreymoor caused by the improper payments. All of these agency agreements related to sale of fertilizer in India. Mr. Chauhan, an Indian national, personally handled all of these sales and is intimately familiar with the matters relating thereto, including the profits made by Dreymoor from the bribe-induced contracts with India and whether bribes were also paid in India. Notably, another trading partner of Applicants, Yara, has already admitted and pled guilty to making large bribe payments in India in connection with fertilizer sales there to the same Indian company which Mr. Chauhan also arranged to purchase fertilizer from Applicants. Thus, Mr. Chauhan will know whether Dreymoor paid bribes to this Indian buyer. The LCIA recently confirmed that despite Dreymoor's opposition, the arbitration will proceed and a Tribunal will be appointed by the LCIA. Mr. Chauhan's evidence will, again, be highly relevant to central issues in that case. (Popov Decl., ¶ 15).

In Cyprus, Applicant sought bank records from the principal offshore shell companies owned or controlled by Messrs. Rogalskiy and Pomytkin that received the bribes from Dreymoor and others, most of whom used Cyprus banks to move the illicit funds. Applicants have also sought a further asset freeze order from the Cyprus court in support of the BVI freeze order. There is a separate contempt proceeding against Mr. Rogalskiy pending in Cyprus for his failure to honestly disclose his assets as ordered by the Court. (Popov Decl., ¶ 16).

Applicants seek to obtain evidence from Mr. Chauhan to discover the amount and details of all improper payments made by Dreymoor and its affiliates to Mr. Rogalskiy and Mr. Pomytkin, the profits obtained by Dreymoor, Dreymoor America and other companies within the Dreymoor group which benefited from the bribes paid by Dreymoor, and other evidence to aid in recovery of the bribe money which the BVI court has stated, on a preliminary basis, is held in constructive trust for Applicants. (Popov Decl., ¶ 17).

In addition, Applicants intend to vigorously pursue additional claims against any involved parties, including (i) Mr. Shishkin for his role in payment of bribes to Mr. Rogalskiy relating to contracts between Applicant and Dreymoor and (ii) other Dreymoor affiliates which benefited from the bribes paid to Mr. Rogalskiy including Belor Eurofert GmbH ("Belor), a German company affiliated with Dreymoor and controlled at all relevant times by Mr. Shishkin through a BVI entity named Lantran (Overseas) Ltd. ("Lantran"). The evidence sought from Mr. Chauhan will also be relevant in these Contemplated Proceedings. (Popov Decl., ¶ 18).

For reasons set forth below, this 28 U.S.C. § 1782 application should be granted. First, it easily meets the three statutory requirements for a Section 1782 application because Mr. Chauhan is "found" in this district and discovery is sought "for use" in pending or contemplated foreign proceedings in which Applicants are "interested persons." Second, the discretionary factors that this Court should consider in determining whether to grant a Section 1782 application under the United States Supreme Court's decision in *Intel Corp. v Advanced Micro Devices*, *Inc.*, 542 U.S. 241, 264-65 (2004) all argue in Applicants' favor as shown below.

II. FACTUAL BACKGROUND

A. NORWEIGAN FERTILZER COMPANY, YARA INTERNATIONAL, S.A. FIRST ADMITS BRIBERY PAYMENTS

The bribery payments first came to Applicants' attention when Yara contacted EuroChem, confessed that its affiliate Balderton Fertilizers SA ("Balderton") had made millions of dollars of bribe payments to Messrs. Rogalskiy and Pomytkin and provided extensive supporting documentation including bank records showing the bribe payments. Yara, a Norwegian corporation partially owned by the Norwegian government, is also one of the leading fertilizer companies in the world. Yara trades for itself and through Balderton, a Swiss-based trading subsidiary of Yara, headed at all material times by Nejdet Baysan ("Baysan"). EuroChem (and its subsidiaries) and Yara have traded regularly directly, and through Balderton, for many years. (Popov Decl., ¶ 20).

In or about 2011, Yara itself informed the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) of the possibility of criminal offences having occurred in Yara's operation, in Libya and, in particular corrupt payments. Yara conducted an external investigation and in June 2012 announced the outcome:

"Since the investigation was initiated, Yara has on three separate occasions in 2011 and 2012 communicated possible irregularities. These notifications were made following the discovery of likely irregularities related to processes in Libya, India and Switzerland. Through the Wiersholm investigation, with its limitations, Yara has received confirmation of these earlier findings:

- *Unacceptable offer of payment to a consultant is documented, related to the establishment of Libyan Norwegian Fertilizer Company (Lifeco). The completion of the actual payment is not documented.*
- *An unacceptable payment of USD 1 million in 2007 to a consultant in India is documented, related to negotiations with Krishak Bharati Cooperative Limited (Kribhco).*
- *A number of payments over several years from the company Balderton in Switzerland have been have been uncovered, totaling approximately USD 15 million. The payments have been made to persons employed by, or associated with companies who are suppliers to Yara or Balderton. Payments from Balderton which have no commercial basis have also been uncovered." [Emphasis added]* (Popov Decl., ¶ 21; Ex. 5).

In or about January 2014, Yara informed Økokrim that Yara acknowledged guilt and accepted a corporate fine of NOK 295 million (approximately $50 million equivalent), the largest corporate fine ever assessed in Norway stating:

"Our acknowledgment of guilt and acceptance of a fine reflect that the Økokrim findings are in line with those of our own investigation. The penalty is severe, but we accept it." said Bernt Reitan, Chairman of the Board of Yara International ASA." (Popov Decl., ¶ 22; Ex. 6).

In 2015, top Yara executives, including its CEO, COO and Chief Legal Counsel, were found guilty of corruption and sentenced to prison terms. (Popov Decl., ¶ 23; Ex. 7).

B. EUROCHEM FIRST LEARNS OF BRIBERY PAYMENTS MADE TO ITS EXECUTIVES

On or about February 28, 2014, Jørgen Ole Haslestad, the new CEO of Yara, called Andrey Melnichenko, Chairman of the Board of Directors and ultimate beneficial owner of EuroChem, and informed him that during the course of the criminal investigation of Yara, and Yara's own internal investigation, it discovered that improper commission payments were made by Balderton and another entity affiliated with Mr. Baysan named "Kopist" between 2004 and 2009 to both Mr. Rogalskiy and Mr. Pomytkin. This was the first that Applicants' had learned that the Yara bribery scheme extended to its employees. (Popov Decl., ¶ 24).

At a subsequent meeting on March 18, 2014 in Norway with EuroChem and its counsel, Yara provided EuroChem with extensive further details on the exact amount, dates and recipient companies of the commissions. Yara informed EuroChem that between 2004 and 2009, Mr. Rogalskiy and Mr. Pomytkin received a total of at least $1,141,904 and $1,058,705 respectively in bribe payments from Balderton and an additional $177,907 and $230,671 from Kopist. Yara's investigation established that the total amount received by Mr. Rogalskiy and Mr. Pomytkin collectively amounted to at least $2,609,187. (Popov Decl., ¶ 25; Exs. 8, 9).

Yara's outside counsel De Brauw Blackstone Westbroek ("De Brauw") provided EuroChem with its reports of its investigation into the corrupt commission payments to Mr. Rogalskiy and Mr. Pomytkin (the "April 11, 2014 De Brauw Report" and "August 26, 2014 De Brauw Report"). The De Brauw Reports contain documentary evidence including wire transfers, bank statements, emails, notes and excerpts from Balderton's financial records irrefutably confirming the corrupt commission payments that were made to the bank accounts of Livingston Properties Equities Inc. ("Livingston") and Rumbay Assets Corp. ("Rumbay") at Bank Julius Baer (Singapore) Ltd as well as another of Mr. Rogalskiy's offshore shell companies, Nimati

International Trading Ltd.'s ("Nimati") account at the Bank of Cyprus in Cyprus. (Popov Decl., ¶ 26; Exs. 10, 11).

Mr. Rogalskiy was terminated by EuroChem on May 12, 2014.[3] EuroChem then searched his office, his office computer, and his secretary's computer and discovered a bank statement for Gianthill Management Ltd., a BVI corporation ("Gianthill"), showing an incoming transfer of $349,947.40 from Dreymoor. Although Mr. Rogalskiy denied in a later Cyprus proceeding that he owned Gianthill (disingenuously claiming that his unemployed mother-in-law owned this offshore entity), that denial proved false, just like his denial of the ownership of Livingston (the recipient of Yara bribes) has been shown as false. This was Applicants' first evidence of bribe payments being made by Dreymoor to or for the benefit of Mr. Rogalskiy. (Popov Decl., ¶ 27; Ex. 12).

Further evidence of Dreymoor bribes and Mr. Rogalskiy's ownership of Gianthill was obtained from Tamara Yakovleva, the Deputy Head of the Fertilizer Division of EuroChem. Ms. Yakovleva was responsible for overseeing the production of fertilizer by Applicants needed by Dreymoor. She testified that Mr. Rogalskiy made a $1 million "loan" to her paid, in part, directly from Gianthill which she understood to be Mr. Rogalskiy's company. Additionally, she testified that Euro 400,000 of the "loan" was paid to her directly by Dreymoor, at Mr. Rogalskiy's direction. (Popov Decl., ¶ 28; Ex. 13).

[3] Mr. Pomytkin was also terminated on May 12, 2014. At a subsequent meeting which Mr. Pomytkin asked EuroChem to attend on May 14, 2014, Mr. Pomytkin admitted that he had received bribe payments from Yara and said he intended to repay them but, to date he has not provided EuroChem with any accounting for the funds he improperly received nor has he repaid any amount. (Popov Decl., ¶ 27).

C. EUROCHEM'S DISCOVERY PROCEEDINGS RELATING TO THE BRIBERY SCHEME

Based on the information EuroChem received from Yara and its own internal investigation regarding the bribery, EuroChem began filing discovery Proceedings in May 2014 in various countries, including Singapore, the British Virgin Islands ("BVI") and Cyprus. (Popov Decl., ¶ 29).

1. *The Singapore Norwich Pharmacal Application*

On May 8, 2014, EuroChem issued an urgent writ in Singapore against Mr. Rogalskiy, Mr. Pomytkin, Livingston and Rumbay (the bribe recipients identified by Yara) seeking (a) disclosure of records relating to bank accounts maintained by them at Bank Julius Baer (Singapore) Ltd. and (b) an injunction freezing any funds maintained in those accounts. That action also included a substantive claim against those defendants, seeking to recover any secret commissions held by them in Singapore. The disclosure request was granted by the Singapore court and the records obtained by EuroChem in Singapore confirmed the secret commission payments made by Yara to Livingston and Rumbay for the benefit of their owners, Mr. Rogalskiy and Mr. Pomytkin respectively just as Yara had described.[4] (Popov Decl., ¶ 30; Exs. 14, 15).

On November 6, 2014, EuroChem obtained limited default judgments and freezing orders against both Livingston and Rumbay relating to funds held in Singapore. Approximately $1.3 million frozen in Livingston's Singapore account was released to EuroChem in payment of its judgment against Livingston. No additional assets being found in Singapore, EuroChem then voluntarily discontinued proceedings against Mr. Pomytkin and Mr. Rogalskiy in Singapore in

[4] In his sworn affidavit filed with the High Court of Singapore in response, Mr. Rogalskiy falsely denied his beneficial ownership of Livingston (as shown below, the BVI disclosure Proceedings unequivocally showed that Mr. Rogalskiy owned Livingston). (Popov Decl., ¶ 30).

order to commence the far broader BVI Action and related disclosure proceedings discussed below. (Popov Decl., ¶ 31).

2. *The BVI Norwich Pharmacal Application Provides Additional Evidence of the Bribery Scheme*

On May 21, 2014, EuroChem filed an application for a Norwich Pharmacal disclosure order (a form of pre-action disclosure proceeding against available in the UK, the BVI and other common law jurisdictions) in the BVI against the registered agents of Livingston, Rumbay and Nimati. That was granted by the BVI Court on May 30, 2014 (the "2014 BVI NP Order"). The information disclosed by the Registered Agents in the BVI revealed that Mr. Rogalskiy was the owner of Nimati and Livingston, and Mr. Pomytkin was the owner of Rumbay, just as Yara had previously disclosed. Those disclosures also demonstrated that Mr. Rogalskiy's sworn denial of his ownership of Livingston was false. (Popov Decl., ¶ 32).

It eventually became clear from these various discovery Proceedings around the world that Mr. Rogalskiy and Mr. Pomytkin had set up a sprawling web of companies registered in the BVI and elsewhere for the sole purpose of laundering the proceeds of their dishonest bribery scheme involving Yara and other of Applicants' trading partners including Dreymoor in which tens of millions of bribe payments were made to companies owned or controlled by Mr. Rogalskiy and Mr. Pomytkin, ultimately causing EuroChem to suffer hundreds of millions of dollars in lost profits on billions of dollars of sales to the companies which paid the bribes to Mr. Rogalskiy and Mr. Pomytkin. (Popov Decl., ¶ 33).

3. *The Cyprus Norwich Pharmacal Applications*

On June 3, 2014, EuroChem brought a Norwich Pharmacal disclosure application in the District Court of Nicosia in Cyprus seeking the disclosure of records relating to bank accounts maintained by Mr. Rogalskiy, Mr. Pomytkin and affiliated entities (Nimati Trading Ltd.

("Nimati") and Gianthill) at the Bank of Cyprus ("BOC") and an injunction against their freezing assets up to the amount of the then known bribes). The Cyprus Court ordered the requested disclosure and injunction (the "First Cyprus Order"). When Mr. Rogalskiy and Nimati later objected to these orders, the parties agreed that the Mr. Rogalskiy and Nimati documents would be released by BOC because Mr. Rogalskiy confirmed he owned Nimati while the records related to Gianthill (which Mr. Rogalskiy claimed was owned by his mother-in-law) would be retained pending a decision on the defendants' objection to the orders. The parties also agreed that the disclosed documents could be used in legal proceedings by Applicants. (Popov Decl., ¶ 34).

From August 2014 through November 2015 (fifteen months) while the Cyprus order remained effective, documents provided by BOC showing tens of millions of dollars of bribe payments were used in legal proceedings in the BVI (substantive proceedings against Mr. Rogalskiy, Mr. Pomytkin and many other parties as discussed below), California (substantive proceedings against relatives of Mr. Rogalskiy who received transfers from Mr. Rogalskiy as discussed below), Belize (disclosure proceedings), Panama (disclosure proceedings), and the Netherlands (attachment application granted by Dutch court) without objection from Messrs. Rogalskiy, Pomytkin or any other entities. Eventually, however, on November 11, 2015, the Cyprus court set aside the First Cyprus Order – not on the merits but solely due to the failure by EuroChem's Cyprus counsel to disclose the employment termination agreement signed by Mr. Rogalskiy[5] (which he did not disclose as he did not believe the document to be relevant to the application before the court). (Popov Decl., ¶ 35).

[5] This agreement simply provided for Mr. Rogalskiy's termination of employment by mutual agreement with a full reservation of rights. (Popov Decl., ¶ 35).

Weeks later on December 4, 2015, EuroChem filed a new action in Cyprus seeking disclosure of the Gianthill records from BOC which was granted by the court on January 22, 2016 (the "Gianthill Order"). From November 2015 - March 2016, documents from the First NP Order and the Gianthill Order were used extensively in BVI, with notice to Mr. Rogalskiy, Mr. Pomytkin, Nimati, Gianthill and the other defendants thereafter without objection from these parties. However, the Gianthill Order was also eventually set aside as a result of Cyprus counsel not fully informing the court of the undertakings made in connection with the First Cyprus Order. The Cyprus court, however, rejected defendants' request for a finding of bad faith on the part of Applicants. The court found this "drastic" part of defendants' application not "to be justified." (Popov Decl., ¶ 36; Ex. 16).

Applicants have renewed their Cyprus disclosure applications and seek the same BOC documents as were previously disclosed. The matter is pending before that court and thus the BOC documents are not used in this application. Once again, however, the information held by Mr. Chauhan is highly relevant to the on-going action in Cyprus. (Popov Decl., ¶ 37).

D. THE ONGOING BVI SUBSTANTIVE PROCEEDINGS

After the extensive discovery Proceedings undertaken around the world, on August 7, 2015, Applicants filed a substantive action in the BVI against those who participated in the bribery scheme, including Mr. Rogalskiy, Mr. Pomytkin, Dreymoor and other companies (incorporated in the BVI and elsewhere) owned and controlled by them which received, held, and, in some cases, transferred the bribe monies on their respective behalves. (Popov Decl., ¶ 38).

On November 19, 2015, the BVI Court agreed it had jurisdiction over the non-BVI defendants including Dreymoor, granting Applicants permission to serve the Claim outside of the jurisdiction on the non-BVI Defendants, on the basis that that "*the BVI is* the *appropriate* *forum*" and "*no other jurisdiction is more appropriate*" for those proceedings and the non-BVI defendants were "necessary or proper parties to those proceedings" Some of the defendants, including Dreymoor, challenged that Order in further proceedings, but their jurisdictional and forum non conveniens challenges were rejected. The defendants have appealed those rulings but the BVI Action is on-going. (Popov Decl., ¶ 39; Ex. 17).

Applicants also sought, and were eventually granted, freezing orders against the assets of all of the bribe recipients including Messrs. Rogalskiy or Pomytkin and the companies they controlled including Gianthill (the company to which Dreymoor paid bribes). In his judgment granting the freezing order against the BVI companies including Gianthill, Judge Bannister stated that there was "*no doubt about*" the dishonest bribery scheme (Feb. 9th Tr. 6/20-7/1), that Mr. Rogalskiy and Mr. Pomytkin were "*the instigators and perpetrators of this very serious fraud*" (*Id.* 10/15-16) and the "*puppet masters*" of their BVI Companies (*Id.* at 13/13), which held the bribe monies "*on constructive trust*" for Applicants. (Popov Decl., ¶ 40; Ex. 3).

The BVI court further determined that "cash tendered in respect of these commission payments was received by essentially the First to Sixth Defendants, all of which are BVI companies. Further transactions involving BVI companies, after receipt, appear to have been directed to [laundering] or concealing the money which was paid in bribes." Feb. 9th Tr. at 7/13-20. (Popov Decl., ¶ 41; Ex. 3).

Accordingly, the purpose of this Application is to discover how much Dreymoor paid to or for the benefit of Mr. Rogalskiy and what other companies or individuals were paid by Dreymoor at the request or on behalf of Mr. Rogalskiy. Additionally, Applicants seek to determine the profits earned by Dreymoor in the bribe-induced transactions which are recoverable as damages in the BVI Action. As a Director and CEO of Dreymoor during the relevant time, Mr. Chauhan should have this knowledge and information. (Popov Decl., ¶ 42).

1. ***Mr. Shishkin's* Personal *Involvement in the Bribery Scheme and Applicants' Contemplated Action Against Him***

Applicants also plan on bringing an action against Mr. Shishkin personally due to his direct involvement in the bribery. Mr. Shishkin's direct involvement therein and liability therefor has been further confirmed in recent meetings with Mr. Shishkin, a Russian citizen and Dreymoor's sole shareholder. Dreymoor grew from a small, unknown fertilizer seller to a major international trader largely as result of its relationship with EuroChem, or more correctly as a result of the corrupt arrangements with Mr. Rogalskiy arranged by Mr. Shishkin, which allowed Dreymoor to purchase massive amounts of fertilizer from Applicants at below-market prices. Through Mr. Rogalskiy, Dreymoor purchased nearly 4.4 million tons of fertilizer worth more than $1.4 billion from EuroChem in the period that Mr. Rogalskiy was being paid bribes by many of Applicants' trading partners. (Popov Decl., ¶ 43).

In its own website Dreymoor bragged that "since its inception, Dreymoor has been one of the fastest growing global fertilizer trading companies in the world. The company's trading volume increased from 700,000 metric tons in 2003 to 2.5 million metric tons in 2010 and over 4 million metric tons in 2014. Its 2014 revenue stands at $1.50 billion." (Popov Decl., ¶ 44; Ex. 18).

EuroChem's independent experts have analyzed Dreymoor's purchases and found they were all grossly underpriced by Mr. Rogalskiy which allowed Dreymoor to reap large, unjustified profits and while causing Applicants losses of nearly one hundred million dollars. Without payment of bribes to Mr. Rogalskiy, Dreymoor would not have been able to purchase these huge amounts at the discounted prices given by the bribe recipient Mr. Rogalskiy. The bribe–induced below-market purchases Dreymoor was able to make from EuroChem resulted in a huge increase in the value of Mr. Shishkin's shareholding in the otherwise obscure Dreymoor. (Popov Decl., ¶ 45; Exs. 19, 20).

In the past two months, ECTG has become aware of Mr. Shishkin's direct involvement in arranging with Mr. Rogalskiy for, and directing Dreymoor to pay, bribes to Mr. Rogalskiy to ensure Dreymoor's access to large volumes of fertilizer from EuroChem at prices substantially below market resulting in large losses to EuroChem. The Applicants have also just become aware of Mr. Shishkin's ownership of Lantran, a BVI company used in the bribery scheme. Indeed, Dreymoor and Mr. Shishkin continue to be involved in the conspiracy with Mr. Rogalskiy as by agreeing to pay, and in fact paying, his (and his affiliates') massive legal fees in the BVI Action and related proceedings abroad. Mr. Rogalskiy and his companies have stated in the BVI Action that these payments from Dreymoor – certainly hundreds of thousands, more likely millions, of dollars in legal fees and expenses are "gifts" from Dreymoor.[6] (Popov Decl., ¶ 46; Ex. 21).

The fact that one of Applicants' largest former trading partners, Dreymoor, is making "gifts" of millions of dollars in legal fees to Mr. Rogalskiy and companies he controls at the direction of Mr. Shishkin demonstrates the depth of the on-going corrupt relationship between

[6] In Applicants' related action against Mr. Rogalskiy's brother and other relatives in California, the defendants were ultimately forced by the court to reveal that Dreymoor was paying their legal fees, submitting a declaration in which they acknowledged that Dreymoor intentionally concealed it was funding the defense costs of Mr. Rogalskiy and others because "*Dreymoor has been concerned regarding an open funding of the certain other defendants until now because of ongoing commercial dealings between Dreymoor's affiliates and other trading companies within the Eurochem group (but not these Applicants) (which continued subsequent to Mr. Rogalskiy's departure from his employment with Applicants) and concerns that Eurochem might react spitefully to damage Dreymoor's business if it was discovered that Dreymoor was seriously defending itself against the claims made against it and others.*" In other words, Dreymoor concealed it was funding Mr. Rogalskiy because it wanted to continue doing business with Applicants' affiliates which it knew would not occur if this fact was revealed. (Popov Decl., ¶ 46; Ex. 22).

Mr. Shishkin, Dreymoor and Mr. Rogalskiy. As a director of Dreymoor, Mr. Chauhan would have information regarding the company's decisions to fund these third parties in the BVI Action. (Popov Decl., ¶ 47).

Recently, Mr. Shishkin belatedly admitted the payments to Mr. Rogalskiy by Dreymoor and his own critical role in arranging these payments with Mr. Rogalskiy and directing Dreymoor to make such payments. He also admitted that he directed Dreymoor to secretly pay the defense costs being incurred by Mr. Rogalskiy and the companies he controls in the BVI Action. Finally, he admitted that he, personally, had been overseeing and directing the defense of this case for himself and the parties Dreymoor was funding, including Mr. Rogalskiy. This dramatic change of story began when Mr. Shishkin contacted EuroChem's Chairman of the Board (formerly General Director), Dmitry Strezhnev, in January 2017. Mr. Shishkin told Mr. Strezhnev that he wanted Dreymoor to resume a business relationship with Applicants rather than continue the legal battles that were costing Dreymoor large amounts as it had agreed to pay all of the costs of all defendants (except the few with no relationship to Mr. Rogalskiy). He also stressed that he was "very tired" of this case which was costing him a lot, both in terms of time and money. (Popov Decl., ¶ 48).

Mr. Strezhnev told Mr. Shishkin that it was a precondition to any such discussion that he (i) guarantee Applicants that neither Rogalskiy, Pomytkin nor their affiliates hold or have held, directly or indirectly, any interest in Dreymoor or any of the Dreymoor affiliates and (ii) he make full disclosure of all payments made to Mr. Rogalskiy and Mr. Pomytkin, and directed Mr. Shishkin to speak with Mr. Popov and Valery Sidnev, General Counsel of EuroChem. Mr. Shishkin again contacted Mr. Sidnev and asked for a meeting with just Mr. Shishkin in attendance. That meeting was held in Moscow at the "Tifisskiy Dvorik" restaurant on February

2, 2017 and Mr. Popov attended with Mr. Sidnev. The meeting lasted for about four hours. (Popov Decl., ¶ 49).

Applicants made clear from the beginning of this meeting that they would not be bound by any confidentiality obligation and nothing was without prejudice. This occurred when Mr. Shishkin informed Mr. Popov and Mr. Sidnev that the Singapore Corrupt Practices Investigation Bureau, the Singapore governmental agency responsible for investigating money laundering and bribery offenses in Singapore ("Corruption Practices Investigation Bureau" or "CPIB"), had informed Dreymoor that, following Applicants' criminal complaint, it was investigating the payments made by Dreymoor to Mr. Rogalskiy and Mr. Pomytkin for possible charges of bribery or money laundering. According to Mr. Shishkin, Dreymoor had received a formal request for information from the CPIB. The CPIB had also asked ECTG and EuroChem for information regarding Dreymoor. (Popov Decl., ¶ 50).

Mr. Popov and Mr. Sidnev immediately informed Mr. Shishkin that ECTG and EuroChem were, and intended to continue, fully cooperating with the CPIB and that anything Mr. Shishkin or other Dreymoor representatives told us would not be kept confidential and would be provided to the CPIB and used in on-going litigation. Mr. Popov and Mr. Sidnev told Mr. Shishkin that if Dreymoor had any basis to show that the payments to Mr. Rogalskiy were not bribes, it should provide that information for Applicants' counsel to review. They cautioned Mr. Shishkin, however, that any information supplied by him or Dreymoor would be provided to the CPIB whether it supported or refuted the bribery allegations. (Popov Decl., ¶ 51).

Mr. Shishkin then told Mr. Popov and Mr. Sidnev that he was the sole ultimate owner of Dreymoor (as confirmed by the official records in Singapore). He told Mr. Popov and Mr. Sidnev that the Singapore CPIB investigation was causing him considerable difficulty and he was not sure how to respond to their demands for information. He acknowledged that payments had been made to Mr. Rogalskiy and his companies by Dreymoor in the amount alleged by Applicants, about $7 million, or even somewhat more. (Popov Decl., ¶ 52; Ex. 23).

Mr. Shishkin admitted that he personally made arrangements for the payments with Mr. Rogalskiy, negotiated the amounts of the payments, and directed Dreymoor to pay them. Mr. Shishkin explained to Mr. Popov and Mr. Sidnev that he had been a personal friend of Mr. Rogalskiy for many years before the payments began but nevertheless had been unable to purchase the large quantities of fertilizer Dreymoor needed from EuroChem despite the fact that other competitors were able to do so. Mr. Shishkin said he personally went to Mr. Rogalskiy who informed him that Dreymoor needed to be on the "approved list." Mr. Shishkin stated that Dreymoor then began making payments to Mr. Rogalskiy and Dreymoor's sales grew exponentially. Dreymoor's purchases from EuroChem went from $21.5 million in 2006, to over $500 million in 2011. This would have been impossible without the bribes it paid to Mr. Rogalskiy at Mr. Shishkin's direction. (Popov Decl., ¶ 53).

Mr. Shishkin further proposed to deliver to Applicants all material evidence of Dreymoor's payments to Mr. Rogalskiy, including those made by it to Mr. Rogalskiy's companies such as Gianthill Management Limited and those made in relation to defendants' legal expenses. In his opinion, that would be a huge advantage for Applicants as they could stop other on-going disclosure proceedings in Cyprus and elsewhere seeking this same information. He made it clear that he had these documents in hand or could easily obtain them from Dreymoor's records to which he had free access at any time. (Popov Decl., ¶ 54).

Mr. Shishkin said it was critical to him that the Singapore CPIB criminal investigation be stopped and asked that Applicants assist Dreymoor in getting the CPIB to end their investigation.

Mr. Shishkin was told that if Dreymoor could prove that the payments to Mr. Rogalskiy and his companies were legitimate, Applicants would assist him in explaining the facts to the CPIB but conversely if no evidence was provided or the evidence showed the millions of dollars paid to Mr. Rogalskiy were, in fact, bribes that, too, would be explained to the CPIB. (Popov Decl., ¶ 55).

He then made the astounding suggestion that instead of proceeding with the legitimate forensic examination Applicants had proposed, that they should agree that Dreymoor would sue Applicants in Singapore, Applicants would agree to "lose" that case and he would then use the judgment in Dreymoor's favor to convince the CPIB that Applicants' allegations of bribery were unfounded. This blatantly improper proposal was immediately and adamantly rejected by Mr. Popov and Mr. Sidnev; they told Mr. Shishkin that Applicants would never agree to any scheme that promoted any untrue story or otherwise involved Applicants in any obstruction of justice. Mr. Popov and Mr. Sidnev told him Applicants would only agree to apply formally to the CPIB asking them to give Dreymoor an additional 45 days to respond to the inquiries so as to allow Dreymoor to provide Applicants, and the CPIB, with proof, if such proof existed, that the payments to Mr. Rogalskiy were for some valid purpose and were not bribery. (Popov Decl., ¶ 56).

Unfortunately, Mr. Shishkin and Dreymoor ultimately failed to provide any such proof. Applicants now plan to sue Mr. Shishkin who is clearly liable as a co-conspirator who orchestrated Dreymoor's bribery of Mr. Rogalskiy. That action may be brought as an expansion of the BVI Action or an independent case against him and other involved parties in Singapore or another appropriate foreign jurisdiction. Mr. Chauhan's information is also highly relevant to this contemplated proceeding. (Popov Decl., ¶ 57).

2. *Applicants' other Trading Partners Confirm the Bribery Scheme*

From 2014 to now Applicants have obtained massive amounts of evidence from other trading partners of their own improper payments to or for the benefit of Mr. Rogalskiy and Mr. Pomytkin, including bank statements and wire transfers evidencing every payment. In total, seven trading partners have admitted making more than $38 million in improper payments to Mr. Rogalskiy and Mr. Pomytkin at the same time Dreymoor was paying Mr. Rogalskiy. The bribery scheme in each case was the same; the trading partner paid a bribe from $2.50 to $5.25 per ton of fertilizer purchased. If the same formula applied to Dreymoor, as is highly likely, it would have paid at least $17 million in bribes to Mr. Rogalskiy. (Popov Decl., ¶ 58).

E. MR. CHAUHAN'S EVIDENCE

During the time that Dreymoor was paying bribes to Mr. Rogalskiy, Mr. Chauhan was a Director and CEO of Dreymoor and Dreymoor America (as well Applicants believe of many other Dreymoor entities which transacted business with Applicants). He regularly negotiated the details of numerous transactions with Applicants with a value of hundreds of millions of dollars. As an example, a letter written by Mr. Chauhan to ECTG in 2013, addressing a shipment of ECTG product is attached to Mr. Popov's Declaration at Exhibit 24. Mr. Chauhan directs the letter in an email to both Mr. Pomytkin and Mr. Rogalskiy. It would defy logic to believe that Mr. Chauhan as a director of Dreymoor was involved in that level of detail in negotiations with Mr. Rogalskiy and Mr. Pomytkin – while Dreymoor was paying bribes to them for the same transaction – and had no involvement with, or knowledge of, the bribery scheme or the profits obtained by Dreymoor and its affiliates as a result. His evidence will be central in all of the Foreign Proceedings and the Contemplated Proceedings against Mr. Shishkin, Belor and others discussed above. (Popov Decl., ¶ 59).

III. LEGAL ARGUMENT

The Court should issue an order granting Applicants' request for discovery because (i) Applicants meet the statutory prerequisites for relief under 28 U.S.C. § 1782, and (ii) the factors to be weighed by the Court in exercising its discretion under the statute heavily favor granting the application.

A. THE APPLICATION SATISFIES THE THREE STATUTORY REQUIREMENTS OF 28 U.S.C. § 1782

Section 1782 of Title 28 of the United States Code, entitled "Assistance to foreign and international tribunals and to litigants before such tribunals," authorizes federal district courts to order discovery to assist applicants in obtaining evidence in the United States for use in foreign legal proceedings.[7] "[T]he statute has, over the years, been given increasingly broad applicability." *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 80 (2d Cir. 2012) (citations and quotations omitted). To obtain discovery under § 1782, an applicant must satisfy three statutory requirements: (i) the person from whom discovery is sought must reside or be found within the district; (ii) the discovery must be for use in a proceeding before a foreign or international tribunal; and (iii) the application must be made by an interested person. 28 U.S.C. § 1782(a); *See* also *In re Chevron Corp.*, 2010 WL 8767266 (M.D. Tenn. Aug. 17, 2010).

Further, an *ex parte* application, as Applicants bring here, "is an acceptable method for seeking discovery pursuant to 28 U.S.C. § 1782." *In re Application of Ontario Principal's Council*, 2014 WL 3845082, *2 (D. Ariz. Aug. 1, 2014) (citing *In re Letters Rogatory from Tokyo Dist., Tokyo, Japan,* 539 F.2d 1216, 1219 (9th Cir. 1976) (holding that the subpoenaed

[7] 28 U.S.C. § 1782(a) provides, in relevant part: "The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. . . . The order may be made . . . upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court."

parties may raise objections and exercise their due process rights by bringing motions to quash the subpoenas); *Application of Consorcio Ecuatoriano de Telecomunicaciones S.A.*, 747 F.3d 1262 (11th Cir. 2014) (affirming district court's denial of motion to vacate order granting *ex parte* § 1782 application and the denial of motion for reconsideration).

1. ***Mr. Chauhan "Resides" and "Can be Found" in This District***

The application satisfies the first criteria of § 1782(a) because the party from whom discovery is sought, Mr. Chauhan, "resides" in the Middle District of Tennessee at 1551 Westhaven Boulevard, Franklin, Tennessee 37064-1420 which he lists as his official address on his Tennessee driver's license. (Popov Decl., ¶ 11). 28 U.S.C. § 1782(a) ("The district court of the district in which a person resides . . . may order him to give his testimony or statement or to produce a document or other thing . . . .").

Mr. Chauhan is also the CEO of Dreymoor America and works at the principal office of Dreymoor America located at 428 Main St., Apt. B, Franklin Tennessee. (Popov Decl., ¶ 11). He can thus be "found" within this district. *In re Edelman*, 295 F.3d 171, 179-80 (2d Cir. 2002) (respondent is "found" if physically present in the district).

2. ***The discovery is "for use" in multiple pending foreign proceedings and contemplated foreign proceedings***

The application satisfies the second criteria of § 1782(a) because, the documents and deposition testimony requested are "for use" in the multiple foreign proceedings discussed and a contemplated foreign proceeding against Mr. Shishkin, Belor and other foreign affiliates of Dreymoor.

In the main substantive action in the BVI, Applicants seek recovery of hundreds of millions of dollars of damages in claims for fraud and bribery against Mr. Rogalskiy, Mr. Pomytkin, their shell companies and Dreymoor. As detailed above, the world-wide bribery scheme and conspiracy accounts for at least $45 million in bribes, and the damages resulting to Applicants as a result of those bribes is many times greater than the bribes themselves. The discovery sought here from a director of Dreymoor, who is also the CEO of Dreymoor America and personally negotiated contractual details with Mr. Rogalskiy and Mr. Pomytkin, will help Applicant demonstrate the scope of the bribery scheme as well as the amount of bribes paid by Dreymoor and the profits obtained by Dreymoor and its affiliates.

Similarly, in the pending Cyprus action, the fact and amount of Dreymoor's bribes will be germane to the disclosures sought about the bribery scheme (especially to the extent that Dreymoor used Cyprus banks to funnel its bribe payments to Gianthill and Mrs. Yakovleva) and will also provide evidence related to the civil contempt claims Applicants are pursuing against Mr. Rogalskiy for his failure to disclose his assets as required by the Cyprus court.

The discovery sought will also be directly relevant to the LCIA Arbitration which is pending in London. That action seeks damages relating to the agency payments ECTG made to Dreymoor in Dreymoor's role as ECTG's agent in those transactions. ECTG seeks to recover both the agency "fees" it paid to Dreymoor and the damages resulting from Dreymoor's bribery scheme in relation to those agency contracts.[8]

Finally, the discovery sought will be used in support of the Contemplated Proceedings against Mr. Shishkin and Belor described above.

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[8] There is a split in authority on whether Section 1782 is available for use in connection with foreign arbitration proceedings. Previous to *Intel*, a foreign arbitration could not be the basis for a §1782 application. In *Intel*, however, the U.S. Supreme Court stressed that 1782 "reflects Congress' recognition that judicial assistance would be available whether the foreign or international proceeding or investigation is of a criminal, civil, administration or other nature". *Intel* at 259 (emphasis added). Since that date courts have considered whether this statement in *Intel* meant that a §1782 application could be based on a foreign arbitration. In the only case is this District considering this issue, Magistrate Judge Brown stated that an arbitral tribunal, at least one authorized by an international treaty, "should be considered an international tribunal under §1782." *In re Chevron Corp.*, 2010 WL 8767266, *2 (M.D. Tenn. Aug. 17, 2010). The court did not determine whether an arbitration before an institution such as the LCIA could support a §1782 application. In any event, given the numerous pending and contemplated foreign proceedings, the court need not decide this issue here.

Any one of these foreign Proceedings is sufficient to satisfy the "for use" requirement because that requirement imposes a *de minimis* burden on the applicant to show that the requested discovery has some relevance to the foreign proceeding. *See In re Application Pursuant to 28 U.S.C. Section 1782 for an Order Permitting Christen Sveaas to Take Discovery from Dominique Levy, L&M Galleries ("In re Application of Sveaas")*, 249 F.R.D. 96, 107 (S.D.N.Y. 2008) (the standard for relevance is "broadly permissive"); *In re Veiga*, 746 F. Supp. 2d 8, 18 (D.D.C. 2010) ("the burden imposed upon an applicant is de minimis"). Relevance is "broadly construed to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *In re Application of Sveaas*, 249 F.R.D. at 106-07 (internal quotations omitted). "Where relevance is in doubt, the district court should be permissive." *Id.* at 107 (citing *In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. 293, 301 (S.D.N.Y. 2003)). District courts should not attempt to determine whether the evidence would actually, or even probably, be discoverable or admissible in the foreign proceeding. *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 82 (2d Cir. 2012) (noting unanimity among the Circuits that have ruled on the issue).

Moreover, "Section 1782(a) does not limit the provision of judicial assistance to 'pending' adjudicative proceedings." *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 258 (2004). Instead, the Supreme Court has held that Section 1782(a) requires only that a proceeding "be within reasonable contemplation." *Id.* at 259; *See* also *In re Servicio Pan Americano de Proteccion*, 354 F. Supp. 2d 269, 274 (S.D.N.Y. 2004) ("Section 1782 may be invoked even where foreign legal proceedings are not even underway").[9] Thus even the Contemplated Proceedings are enough to satisfy the "for use" requirement.

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[9] Courts have found that an order of discovery is appropriate for a contemplated proceeding where, as here, the applicant has conducted a detailed investigation before filing the application. See *Application of Consorcio*

3. *EuroChem and ECTG Both Qualify as "Interested Persons"*

The application satisfies the third criteria of § 1782(a) because, as claimants in the Foreign Proceedings and the potential plaintiff in the Contemplated Proceedings, Applicants qualify as "interested persons" under Section 1782. *In re Chevron Corp.*, 2010 WL 8767266, *1 (M.D. Tenn. Aug. 17, 2010) ("as a party to the two [foreign] proceedings, Chevron is clearly an interested person with the meaning of the statute"); *Application of Esses*, 101 F.3d 873, 875 (2d Cir. 1996) (a party to the underlying foreign proceedings "is an 'interested person' within the meaning of the statute"); *In re Application for an Order Permitting Metallgesellschaft AG to take Discovery*, 121 F.3d 77, 79 (2d Cir. 1997) (as a party to the foreign proceeding, the applicant qualifies as an interested person).

B. THE COURT SHOULD GRANT APPLICANTS' SECTION 1782 PETITION UNDER THE FOUR DISCRETIONARY FACTORS IN *INTEL*

Once the statutory requirements are met, as they are here, courts consider the four discretionary factors that were articulated by the Supreme Court in *Intel Corp. v. Advanced Micro Devices*, 542 U.S. 241 (2004) to determine whether to exercise their discretion to grant the 1782 application: (i) whether "the person from whom discovery is sought is a participant in the foreign proceeding;" (ii) "the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance;" (iii) whether the application "conceals an attempt to circumvent foreign proof- gathering restrictions or other policies;" and (iv) whether the discovery sought is unduly intrusive or burdensome. 542 U.S. at 264-65. In considering these

Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc., 747 F. 3d. 1262, 1271 (11th Cir. 2014) (discovery granted for contemplated proceeding where Section 1782 applicant first conducted "an extensive internal audit" and provided a "detailed explanation of its intent to pursue civil" litigation).

factors, courts exercise their discretion liberally in favor of granting discovery. *See Brandi-Dohrn*, 673 F.3d at 80. In this case, all four factors favor allowing discovery.

1. *Mr. Chauhan Is Not a Participant in the Foreign Proceedings*

If the person from where discovery is sought is a party to the foreign proceeding, the first *Intel* factor weighs against the application. That is not the case here as Mr. Chauhan is not a party to the BVI Action, the Cyprus Action or the LCIA Arbitration. Under Intel, this factor thus favors the Applicants as the respondent is not a party to the foreign proceedings. *See Intel*, 542 U.S. at 264. Even if Mr. Chauhan were to assert that he is amenable to subjecting himself to discovery in the BVI, Cyprus, or the UK, relief should still be granted here because a Section 1782 applicant is not required to first seek discovery in the foreign tribunal. *See Euromepa S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1098 (2d Cir. 1995) (noting the lack of a "quasi-exhaustion requirement . . . that would force litigants to seek information through the foreign or international tribunal before requesting discovery from the district court") (internal quotations omitted); *Application of Malev Hungarian Airlines*, 964 F.2d 97, 100 (2d Cir. 1992) ("We find nothing in the text of 28 U.S.C. § 1782 which would support a quasi-exhaustion requirement").

2. *The BVI and Cyprus Courts Would Be Receptive to the Requested Discovery, and the Character of the BVI and Cyprus Proceedings Favors Granting the Application*

The second *Intel* factor – "the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal – court judicial assistance" – also favors Applicants. In examining this factor, "a district court's inquiry into the discoverability of requested materials should consider only authoritative proof that a foreign tribunal would reject evidence obtained with the aid of section 1782." *Euromepa*, 51 F.3d at 1100 (emphasis added). Authoritative proof is limited to proof "embodied in a forum country's judicial, executive or legislative declarations that specifically address the use of evidence gathered under foreign procedures[.]" *Id.*

There is no evidence that the BVI or Cyprus court of the LCIA would reject evidence produced under this application. To the contrary, the BVI and Cyprus courts have already been receptive to evidence disclosed in the discovery Proceedings in the various other foreign jurisdictions (Singapore, Belize, Panama, etc.). In fact, the BVI court relied on that evidence in finding there was "*no doubt about*" the dishonest bribery scheme (Feb. 9th Tr. 6/20-7/1), that Mr. Rogalskiy and Mr. Pomytkin were "*the instigators and perpetrators of this very serious fraud*" (*Id.* 10/15-16) and the "*puppet masters*" of their BVI Companies (*Id.* at 13/13), which held the bribe monies "*on constructive trust*" for EuroChem; "*the risk of asset dissipation arises from [Mr. Rogalskiy's and Mr. Pomytkin's] control of the BVI Defendants*" (Feb. 25th Tr. 14/15-17); "*the bribe monies received by the BVI Defendants have been transferred to the Respondents and used to* purchase *various substantial assets on behalf of [Mr. Rogalskiy and Mr. Pomytkin]*" (*Id.* at 14/25-15/14); and that there was a *"clear risk that based on evidence and the absent freezing relief, the Respondents were very likely to dissipate assets which are the subject of the constructive trust*." (*Id.* at 15/16-19) (emphasis added). (Popov Decl., Exs. 3, 4). There is no reason to expect that evidence from a U.S. court would be any different. Moreover, the LCIA rules which govern the pending LCIA arbitration do not preclude the use of evidence obtained elsewhere and the Tribunal would be receptive to such evidence.

3. ***ECTG Is Not Circumventing Any BVI, Cyprus or LCIA Proof-Gathering Restrictions***

Courts typically weigh the third Intel factor against the applicant only where they find that an application is brought in bad faith. *See In re Application of Hill*, No. M19-117 (RJH), 2007 WL 1226141, at *3 (S.D.N.Y. Apr. 23, 2007) ("Absent any indication of bad faith on [the applicant's] part, the Court is simply unwilling to weigh the request for § 1782 assistance itself as a negative discretionary factor") (internal quotations omitted); *In re Gemeinshcaftspraxis Dr. Med. Schottdorf*, No. M19-88 (BSJ), 2006 WL 3844464, at *7 (S.D.N.Y. Dec. 29, 2006). In this case, the Applicants have already submitted evidence gathered pursuant to other foreign discovery orders in the BVI Action and the Cyprus action, which demonstrates that the Applicants are seeking discovery in good faith. Further, the evidence that the Applicants have obtained to date demonstrates that they have a good faith basis to pursue discovery for use in the Contemplated Proceedings against Mr. Shishkin and Belor. Accordingly, this factor weighs in favor of granting the application.

4. ***ECTG's Discovery Requests Are Narrowly Tailored and Are Not "Unduly Intrusive or Burdensome"***

The fourth *Intel* factor favors the applicant as long as the requests for discovery are not overly burdensome or duplicative. *See Esses v. Hanania (In re Esses)*, 101 F.3d 873, 876 (2d Cir. 1996) (per curiam) (affirming discovery where there was no "indication that the district court's order is overly burdensome or duplicative"); *Minatec Fin. S.A.R.L. v. SI Grp. Inc.*, No. 1:08-cv-269 (LEK/RFT), 2008 WL 3884374, at *8 (N.D.N.Y. Aug. 18, 2008) (no undue burden where the document request was "specifically and narrowly tailored").

In this case, the Applicants' discovery requests are narrowly tailored to the Applicants' claims regarding Dreymoor's and Mr. Shishkin's involvement in the improper payments and bribery scheme. Indeed, in an effort to narrowly tailor the discovery being sought, the proposed subpoena seeks production of documents in response to only four document requests (a copy of the subpoena that the Applicant intends to serve on Mr. Chauhan is attached as Exhibit 1 to the Popov Declaration). Further, the requested discovery implicates a discrete universe of documents and testimony relating to Dreymoor's and Mr. Shishkin's involvement in the payment of funds from and any payments to Valery Rogalskiy. The relevant documents and testimony should thus be easily identifiable, readily accessible, and not burdensome for Mr. Chauhan to produce. To the extent that the Applicants' document requests somehow create burden issues for Mr. Chauhan, the Applicants would, of course, meet and confer with Mr. Chauhan in an effort to resolve them.

IV. CONCLUSION

Based on the foregoing, EuroChem and ECTG respectfully move the Court to issue an Order (a proposed order is filed herewith):

1. Approving the Applicants' petition for discovery;

2. Granting issuance of the subpoena as it appears attached as Exhibit 1 to the Declaration of Igor Popov filed herewith; and

3. Directing Mr. Chauhan to produce the documents in his possession, custody, and control, as requested in the subpoena, by no later than June 2, 2017, 12:00 p.m., and to provide the deposition testimony requested in the subpoena on or before June 19, 2017, 9:30 a.m. at the address of Tennessee counsel to Applicants shown in the subpoena.

Dated: May 18, 2017

Respectfully submitted,

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